

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX UGANAP ALIAS COMMANDER MATADOR, FAUSTINO UGANAP, SALVADOR UGANAP, NONOY PANDAY, TIRSO ARANG AND FOUR (4) JOHN DOES, ACCU...

G.R. No. 130605. June 19, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Petitioner is the lone appellant from the decision of the Regional Trial Court of Davao City[1] which convicted him alone for the murder of Pedro Arang and acquitted the rest of the accused.

The information against Felix Uganap, Salvador Uganap, Faustino Uganap, Nonoy Panday, Tirso Arang, and four John Does, docketed as Criminal Case No. 23264-91, reads:

The undersigned accuses the above-named accused of the crime of Murder under Art. 248 of the Revised Penal Code, committed as follows:

That on or about January 6, 1990, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping each other, armed with firearm and a bladed weapon, with treachery and evident premeditation and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted, stabbed and shot with said weapons one Pedro Arang, thereby inflicting him mortal wounds which caused his death.

CONTRARY TO LAW.[2]

Salvador Uganap died before he could be arrested; hence, trial proceeded only as against Felix Uganap, Faustino Uganap, Nonoy Panday, and Tirso Arang.

Six witnesses were presented by the prosecution, including one eyewitness and the doctor who conducted the necropsy over the victim's body.

It was established from the testimonies that the victim and some of the accused were close relatives. Accused Tirso Arang is the half-brother of the victim, while accused-appellant Felix Uganap is also the victim's cousin. Accused Faustino Uganap is the brother-in-law of the victim, being the brother of the latter's wife, Leilani Arang. They are all members of the Bagobo tribe.

The lone eyewitness, Samuel Arang, also a cousin of the victim, testified that at around 8:30 in the evening of January 6, 1990, he was walking home when he stopped near the house of Salvador Uganap, one of the accused, to light a cigarette. He peeped through a hole in the wall of the house and saw the five accused gathered together --- Felix Uganap had a .38 revolver tucked to his waist, while Nonoy Panday held a pistolized carbine.[3] The room was illuminated by a lamp.[4] Upon seeing that they were armed, Samuel Arang moved away from the house and hid behind a coconut tree. The accused left Salvador Uganap's house and went to the victim's house,

which was about 30 meters away from where the witness was.[5] Samuel Arang stated that he saw Salvador Uganap kick the door of Pedro Arang's house; seconds later, Pedro opened the door, carrying with him a kerosene lamp. Immediately, Felix Uganap shot him. Pedro shouted for help, calling on his "Tio Pelagio" (the eyewitness's father). Upon seeing the shooting, Samuel Arang fled to his house where he told his father of what he saw. As they were afraid, they did not attempt to rescue the victim but waited until the next morning to attend to the body.[6]

Samuel Arang correctly identified the four surviving accused in open court.

The trial court also took into consideration the testimony of Nolly Luchavez, who identified all the accused as members of a religious vigilante group called Ituman. Luchavez was himself recruited into the group when he was only 14 years old. Accused-appellant Felix Uganap was the group's designated field commander, and carried the alias "Commander Matador". Accused Nonoy Panday was also a commander. Luchavez left the group after five years, in 1990, disillusioned that the group which he thought had good objectives turned out to be nothing more than a gang of hired killers.[7]

Luchavez's testimony revealed that the plan to kill Pedro Arang was proposed by Faustino Uganap at a coffee shop in Toril, Davao City on December 18, 1989. Present at that meeting were the four other accused and Luchavez. Faustino paid Felix P3,000.00 for the purpose. Luchavez was supposed to knock on the door of Pedro Arang's house. He said that the group intended to undertake the killing on December 24, but this was aborted since they found out that the victim left town to visit his wife in Tagum.[8] Hence, the plan was set to January 6.

Luchavez, however, was unable to go with the group to Pedro Arang's house because he had a fever that day. Felix Uganap reportedly said, "Well, it is alright, anyway we have another mission." [9] The day after, he learned from Tirso Arang and Felix Uganap that Pedro had been killed.

The trial court determined that the cause of the conflict between Faustino Uganap and the victim was a piece of land.[10] Pedro wanted to build his house therein but Faustino opposed it.

Two other prosecution witnesses corroborated the testimony of the eyewitness, Samuel Arang. Ernito Libano and Alejandro Bualan, Jr. both heard gunshots from the direction of Pedro Arang's house. Libano heard a shout and recognized the victim's voice. He also claimed that when he looked out of his window he recognized Salvador Uganap, whose face was illuminated by the sulo (torch) he was holding, as one of the persons standing outside Pedro Arang's house.

Based on the necropsy report of Dr. Jose Ladrido, it was ascertained that Pedro Arang died almost instantly from the multiple wounds he sustained --- seven stab wounds and three gunshot wounds. The stab wound that punctured the victim's left kidney, and the gunshot wound that penetrated the intestines, were fatal.

All the accused interposed denials and alibis. They denied that they were together on the night of the incident, or that they went to the house of Pedro Arang. Faustino said he was making copra with his nephew, Margarito Arang. Nonoy Panday and Tirso Arang said that they were not in town. Accused-appellant stated that he reported to work at Crown Fruits, where he remained on duty as a guard the whole night. They all denied being members of the vigilante group Ituman.

The conspiracy theory of the prosecution fell through with the lower court, which found the evidence to be less than convincing. It held that only two of the five accused, herein accused-appellant and the deceased Salvador Uganap, were positively identified by witnesses Samuel Arang and Ernito Libano on the night of the incident. Moreover, although Nolly Luchavez testified that Faustino Uganap proposed the killing, there was no showing that he participated in the killing as based on the account of Samuel Arang he, as well as Nonoy Panday and Tirso

Arang, merely stood around while Felix Uganap assaulted Pedro Arang.[11]

The RTC likewise found that the purported eyewitness account that Pedro was shot as soon as he opened the door was belied by the necropsy report which indicated that the bullets entered the victim's body from the posterior. In fact, all stab and gunshot wounds were located on the victim's back.

The trial court pursued its point in this wise:

Analyzing further the Necropsy Report and testimony of Dr. Jose Ladrado, the victim Pedro Arang could not have been shot while standing because the gunshot wounds were located at the lower part of his body and (their) projection was downwards. If Pedro Arang was shot while standing or even in a prone position, the projection of the gunshot wounds would not be downwards but at level.

The most logical explanation is that Pedro Arang was first stabbed and when he was slumping down, he was shot.

At a distance of 30 meters from where witness Samuel Arang was standing and taking into consideration the nighttime, and the relative position of accused Salvador Uganap, who we believe is in front of the group, as he was holding a lamp and therefore, his back was turned from witness Samuel Arang, the latter could not have seen accused Felix Uganap frontally shooting the victim Pedro Arang.[12]

Thus, the trial court concluded:

Collating the various testimon(ies) of (the) prosecution witnesses, we surmised that Pedro Arang upon opening the door and realizing the malevolent intention of the men standing outside, immediately turned his back, but accused Salvador Uganap who was near him instantaneously stabbed him at the back, hitting him at his left side. As Pedro Arang was slumping down (on) the floor, accused Felix Uganap shot him, hitting him at the upper middle part of his buttocks and right leg.[13]

From this mode of attack, the trial court concluded treachery. The killing was thus qualified to murder.

Having acquitted accused Faustino Uganap, Nonoy Panday, and Tirso Arang for failure of the prosecution to prove conspiracy as against them, the RTC held that only Felix Uganap and Salvador Uganap were proved culpable. Owing to the earlier death of Salvador Uganap, only Felix Uganap, herein accused-appellant, was convicted.

The dispositive part of the RTC decision reads:

IN VIEW OF ALL THE FOREGOING, accused Faustino Uganap, Nonoy Panday and Tirso Arang are hereby acquitted of the crime charged and they shall be released from custody immediately.

In pronouncing an acquittal, we are moved by the circumstances already mentioned which though not enough to convince us of accused's innocence, nonetheless, preclude us from making a pronouncement that the guilt had been established beyond reasonable doubt which is ought to be, to justify their conviction (People vs. Joel Quintero y Ybasco, G.R. No. 80315-16, November 16, 1994).

As to accused Felix Uganap, his guilt having been established beyond reasonable doubt of the crime of Murder under Art. 248 of the Revised Penal Code, he is hereby sentenced to suffer a penalty of reclusion perpetua.

Accused Felix Uganap is further ordered to indemnify the family of Pedro Arang the following:

1. P50,000.00 for the death of Pedro Arang;
2. For loss of income, what was proved on record is that the victim, at the time of his death, was 36 years old, in good health, and working at a hacienda with wage of P1,000.00 per month. Hence, using the formula

repeatedly adopted by the Supreme Court: $[2/3 \times (80 - \text{age of victim at time of death}) \times \text{a reasonable portion of the net income which would have been received by the heirs as support}]$, this Court fixes the award for loss of earning capacity of the victim at P90,000.00; and

3. P5,000.00 for burial expenses.

SO ORDERED.[14]

In this appeal, Felix Uganap pleads a review of his conviction, asseverating that there was no sufficient evidence to hold him guilty of the murder of Pedro Arang. He bases his argument on the inconsistencies in the testimony of the purported eyewitness, Samuel Arang, whose claim that he saw accused-appellant shoot the victim as soon as the latter opened the door was proven wrong by the location of the wounds on the victim's body. He asserts that the credibility of Samuel Arang's statements being in serious question, his conviction could not stand in the absence of positive identification of him as the assailant and murderer of Pedro Arang.

Accused-appellant's argument capitalizes on the lower court's finding of the absence of conspiracy. Without a finding of conspiracy, where the perpetrators are perceived to further a common criminal design and thus, the act of one is taken to be the act of all, a conviction of accused-appellant must rest on evidence that points to him particularly as the assailant and killer of Pedro Arang. Indeed, reasonable doubt of accused-appellant's guilt is engendered by the inadequacies of the lone eyewitness's testimony which, due to his distance (he witnessed the incident some 30 meters afar) and poor visibility (there was no moon that night and the only illumination came from the sulo that Salvador Uganap held), failed to clearly and convincingly point to accused-appellant, to the exclusion of everyone else, as the perpetrator of the crime. The credibility of Samuel Arang's account is further undermined by the fact that it is not supported by the findings in the necropsy report (the location of the wounds does not sustain the claim that the victim was frontally shot), a matter which the defense insists could mean that the whole eyewitness claim was a fabrication.

Certainly, the position of accused-appellant is easy to accept where, setting the conspiracy theory aside, there is no direct evidence that positively identifies him as the one who rendered the fatal blow or shot which killed Pedro Arang. A diligent study of the records, however, convinces the Court that a conspiracy to kill Pedro Arang was in fact clearly and convincingly proven, and that accused-appellant was a part of this conspiracy.

The review of criminal cases necessitates a re-examination of the entire evidence on record. Although the absence of conspiracy, as with any other finding of fact, will not be disturbed on appeal where the same is consistent with the evidence presented, the Court is likewise not prohibited from instituting a finding of conspiracy, in reversal of the findings of the lower court, when its existence is manifest from the evidence at hand.

Conspiracy is revealed by the acts before, during and after the commission of the crime which indicate joint purpose, concerted action, and concurrence of sentiments.[15] In innumerable cases, the Court has held that direct proof is not essential,[16] because conspiracy may be equably inferred from the acts of the accused disclosing their joint purpose and design. In the instant case, however, nothing less than direct proof of a previous agreement to kill the victim, plus an eyewitness account of how the conspirators effected their plan, was submitted into evidence but disregarded by the trial court.

The testimony of Nolly Luchavez attests that a conspiracy was hatched on December 18, 1989, when Faustino Uganap's proposal to kill Pedro Arang was accepted by the rest of the accused. On that same occasion, money changed hands and the evil deal was sealed. It was accused-appellant himself who received the money from Faustino Uganap. The criminal resolve was sustained for more than two weeks (the first meeting was on December 18, 1989; the second meeting, December 24, 1989; the killing was done on January 6, 1990.).[17]

Because of the inadequacies of Samuel Arang's testimony, there is no sufficient evidence to establish the precise mode of attack or extent of participation of each of the accused. However, we are not prepared to dismiss the entire testimony of Samuel Arang which does not merely dwell on the attack at the victim but also on the incidents moments before the attack, namely, that he saw the accused together at Salvador Uganap's house, that they were armed, and that they left together for the house of Pedro Arang. Shortly after these incidents, gunshots and a shout were heard by both Ernito Libano and Alejandro Bualan, Jr. coming from the direction of Pedro Arang's house. The next day, Pedro's lifeless body was found in that house.

Thus, we give full credence to the testimony of Samuel Arang on the actuations of the accused moments before the killing. That his statements on the mode of attack do not jive with the medical findings should not operate to destroy the weight and credibility of his entire testimony.

xxx Even where a witness is found to have deliberately falsified the truth in some particulars, and it was not shown that there was such intended prevarication by complainant in this case, it is not required that the entire testimony be rejected, since such portions thereof deemed worthy of belief may be credited. [People vs. Gohol, 170 SCRA 585 (1989).] It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. [People vs. Arbolante, 203 SCRA 85 (1991).][18]

Besides, a conspiracy having been unquestionably shown, it is actually unnecessary to establish who among the malefactors inflicted the fatal blow.[19] All conspirators are liable as co-principals regardless of intent and character of participation.[20]

The plot against Pedro Arang's life having been explicitly established by the testimony of Nolly Luchavez, it would be absurd to accept that Faustino Uganap, Nonoy Panday and Tirso Arang were at the victim's house as mere onlookers. That they did not lift a finger against the victim is beside the point, because the evidence shows that they were part of the conspiracy from its inception. Much as we are prevented from disturbing the acquittals granted them by the court a quo,[21] we reiterate the existence of a conspiracy among the accused and hold herein accused-appellant liable as one of the conspirators.

Neither may accused-appellant invoke the acquittal of the other conspirators to merit the reversal of his conviction. The case of People vs. Arlalejo[22] illustrates that

xxx there is nothing irregular with the acquittal of one of the supposed co-conspirators and the conviction of another. Generally, conspiracy is only a means by which a crime is committed as the mere act of conspiring is not by itself punishable. Hence, it does not follow that one person alone cannot be convicted when there is a finding of conspiracy. As long as the acquittal of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.

Unlike the case of Arlalejo, however, where the Court found that the evidence proved only the existence of a conspiracy but not the culpability of accused-appellant, the evidence in the instant case shows that the conspirators (including herein accused-appellant) implemented their plan to full effect.

The information alleges that the crime was attended by treachery and evident premeditation.[23] The existence of any of these circumstances will qualify the killing to murder. The evidence falls short of proving treachery, but we find the presence of evident premeditation.

We have earlier determined that no convincing evidence was submitted on the manner of attack. We cannot thus sustain the trial court's finding of treachery based on its admitted "surmise"[24] on how the attack took place. While dismissing as incredible Samuel Arang's testimony that the victim was shot the moment he opened the door, it substituted in place of evidence its own inference that "Pedro Arang upon opening the door xxx immediately turned his back, but accused Salvador Uganap who was near him instantaneously stabbed him at the

back, hitting him at his left side. As Pedro Arang was slumping down the floor, accused Felix Uganap shot him, hitting him at the upper middle part of his buttocks and right leg." [25] This is purely conjecture on the part of the trial court. In several cases, we have declined to appreciate treachery where no particulars were shown as to the manner by which the aggression was commenced and developed. [26] Treachery cannot be acknowledged on the basis of mere presumptions or suppositions, but must be proven as clearly as the crime itself. [27]

Similarly, the elements of evident premeditation must be established with equal certainty and clarity as the criminal act itself before it can be appreciated as a qualifying circumstance. [28] These elements are: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that they clung to their determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of their act. [29] The essence, therefore, of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. [30]

All the elements of evident premeditation are met in this case. As early as December 18, 1989, the conspirators had determined to kill Pedro Arang. On December 24, 1989, they met to set their heinous plan into effect but they had to postpone it because Pedro left for another town to visit his wife. Still they clung to their resolve as they simply postponed the execution to January 6, 1990. All these demonstrate that the criminal intent had been harbored in dark reflection and calculation for more than two weeks, where the malefactors had every opportunity to abandon it but did not do so.

The Court also observes that another aggravating circumstance was proven by the evidence. Nolly Luchavez's testimony that the taking of Pedro Arang's life carried the price of P3,000.00 was categorical, credible, and un rebutted.

PROSECUTOR GARCIA, JR.

Q:

Alright, you said the group was for hire. Was there any amount involved during that meeting?

A:

Yes, sir.

Q:

Who had the money and to whom was the money given?

A:

Given to us. The money came from Faustino (Uganap), intended for Felix Uganap.

Q:

How much was given by Faustino to Felix?

A:

P3,000.00.

Q:

Did you see?

A:

Yes, sir.

Q:

Did you see (if) the money was counted by Felix?

A:

Yes, sir, that was after we took our merienda, he immediately counted the money.[31]

However, because under the Rules of Criminal Procedure as revised on December 1, 2000, generic aggravating circumstances must be specifically named in the information,[32] the Court will allow for this amendment to retroact for the benefit of accused-appellant. Hence, the aggravating circumstance of price or reward will not be appreciated.

The crime was committed before the amendatory provisions of Republic Act No. 7659[33] took effect. Thus, at that time, the provisions of Article 248 of the Revised Penal Code set the penalty for murder at reclusion temporal in its maximum period to death. Conformably with *People vs. Muñoz*[34] and reiterative cases[35], in the absence of mitigating or aggravating circumstances, the penalty of reclusion perpetua is applicable.

On the damages awarded for loss of earning capacity, we are inclined to grant the same despite the non-availability of documentary evidence.[36] In *People vs. Dizon*,[37] we stated that oral testimony will suffice to prove net earning capacity where the victim was employed as a daily wage worker earning less than the minimum wage under current labor laws. Pedro Arang, a hacienda worker receiving wages of P1,000.00 a month,[38] was certainly earning far less than the minimum wage.

The trial court correctly adopted the formula used by this Court in computing loss of earning capacity. Thus:

Net earning capacity =

$[2/3 \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses})]$ [39]

As there is no proof of living expenses of the deceased, the net income is estimated to be 50% of the gross annual income.[40] Hence, in the instant case, the damages payable for loss of earning capacity is computed as follows:

Net earning capacity

$[= 2/3 \times (80 - 36) \times (P12,000.00 - P6,000.00)]$

$= 2/3 \times 44 \times P6,000.00$

$= P176,000.00$

Based on the foregoing, the damages representing loss of earning capacity is set at P176,000.00.

The award of P5,000.00 as actual damages, representing burial expenses, is sustained. [41]

WHEREFORE, the appealed decision is **AFFIRMED** with the above modifications. Accused-appellant Felix Uganap is hereby declared guilty of murder and sentenced to suffer the penalty of reclusion perpetua. He is further required to pay the heirs of Pedro Arang P50,000.00 as death indemnity, P176,000.00 as damages for loss of earning capacity, and P5,000.00 as actual damages.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Presided by Judge Anita Alfelor-Alagaban.

[2] Rollo, 9.

[3] TSN, August 14, 1992, 5.

[4] Ibid., 4.

[5] Ibid., 6.

[6] Ibid., 9.

[7] The RTC decision mentions the killing of one Fructuoso Aldepolla, for which accused-appellant was convicted by the RTC (Branch 8), Davao City. Nolly Luchavez also testified for the prosecution in that case. Rollo, 23.

[8] TSN, May 14, 1993, 9.

[9] Ibid., 10.

[10] RTC Decision; Rollo, 21.

[11] Ibid., 33.

[12] Ibid., 34-35.

[13] Ibid., 35.

[14] RTC Decision; Rollo, 36.

[15] *People vs. Sabadao*, G.R. No. 126126, October 30, 2000; *People vs. Avillano*, 269 SCRA 553 (1997).

[16] See *People vs. Mercado*, G.R. No. 116239, November 29, 2000; *People vs. delos Santos*, G.R. No. 132123, November 23, 2000; *People vs. Maldo*, 307 SCRA 424 (1999); *People vs. Barredo*, 297 SCRA 246 (1998).

[17] TSN, May 14, 1993, 7-8.

[18] *People vs. Empleo*, 226 SCRA 454 (1993), cited in *People vs. Monieva*, G.R. No. 123912, June 8, 2000.

[19] *People vs. Panida*, 310 SCRA 66 (1999); *People vs. Araneta*, 300 SCRA 80 (1998); *People vs. Obello*, 284 SCRA 79 (1998); *People vs. Salison, Jr.*, 253 SCRA 758 (1996).

[20] *People vs. Panida*, *supra*.

[21] The right against double jeopardy is enshrined in the Constitution (Art. III, Sec. 21), and the acquittal of the accused constitutes a bar to another prosecution for the offense charged (Rule 117, Sec. 7 of the Revised Rules of Criminal Procedure).

[22] G.R. No. 127841, June 16, 2000.

[23] Rollo, 9.

[24] RTC Decision; Rollo, 35.

[25] Ibid.

[26] *People vs. Cario*, 288 SCRA 404 (1998); *People vs. Amaca*, 277 SCRA 215 (1997); *People vs. Salvador*, 224 SCRA 819 (1993); *People vs. Cabarrubias*, 223 SCRA 363 (1993). A recognized exception is *People vs. Ganohon*, 196 SCRA 431 (1991), where the killing of a child was characterized as treachery even if the manner of assault was not shown, because the weakness of the victim due to tender age assures the absence of danger to the attacker.

[27] *People vs. Amaca*, *supra*.

[28] *People vs. Reyes*, 287 SCRA 229 (1998).

[29] *People vs. Torres*, G.R. No. 138046, December 8, 2000; *People vs. Magno*, 322 SCRA 494 (2000); *People vs. Tan*, 314 SCRA 413 (1999); *People vs. Silvestre*, 307 SCRA 68 (1999); *People vs. Gatchalian*, 300 SCRA 1 (1998); *People vs. Villamor*, 292 SCRA 384 (1998); *People vs. Timblor*, 285 SCRA 64 (1998).

[30] *People vs. Bibat*, 290 SCRA 27 (1998).

[31] TSN, May 14, 1993, 8.

[32] See Sec. 8 of Rule 110, Revised Rules of Criminal Procedure.

[33] Took effect on December 31, 1993. R.A. 7659 restored the death penalty and increased the penalty for murder to reclusion perpetua to death.

[34] 170 SCRA 107 (1989).

[35] *People vs. Galano*, 327 SCRA 462 (2000); *People vs. Galam*, 325 SCRA 489 (2000); *People vs. Panaga*, 306 SCRA 695 (1999).

[36] Damages representing net earning capacity had been awarded by the Court based on testimony. See *People vs. Bangcado*, G.R. No. 132330, November 28, 2000; *People vs. Villorba*, G.R. No. 132784, October 10, 2000; *People vs. Antonio*, G.R. No. 128900, July 14, 2000; *People vs. Verde*, 302 SCRA 690 (1999).

[37] 320 SCRA 513 (1999).

[38] TSN, April 14, 1993, 9.

[39] *People vs. dela Cruz*, G.R. No. 128359, December 6, 2000; *People vs. Templo*, G.R. No. 133569, December 1, 2000; *People vs. Sirad*, G.R. No. 130594, July 5, 2000.

[40] *People vs. Templo*, *supra*, citing *People vs. Librando*, G.R. No. 132251, July 6, 2000.

[41] TSN, April 14, 1993, 6. See *People vs. Aquino*, 322 SCRA 769 (2000) and *People vs. Felix*, 297 SCRA 12 (1998) where the Court sustained for having been duly proved the awards of actual damages of P2,500.00 and P10,000.00, respectively, representing burial expenses, on the basis of the testimony of the victim's spouse.

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